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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 14th May, 1975:—

BILL No. XII OF 1975

A Bill to regulate certain conditions of service of sales promotion employees in certain establishments.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title, extent, commencement and application.

1. (*1*) This Act may be called the Sales Promotion Employees (Conditions of Service) Act, 1975.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

(*4*) It shall apply in the first instance to every establishment engaged in pharmaceutical industry.

(5) The Central Government may, by notification in the Official Gazette, apply the provisions of this Act, with effect from such date as may be specified in the notification, to any other establishment engaged in any notified industry.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "establishment" means an establishment engaged in pharmaceutical industry or in any notified industry;

(*b*) "notified industry" means an industry declared as such under section 3;

(*c*) "prescribed" means prescribed by rules made under this Act;

(*d*) "sales promotion employee" means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, and—

(*i*) who draws wages (being wages, not including any commission) not exceeding seven hundred and fifty rupees per mensem; or

(*ii*) who had drawn wages (being wages, including commission), or commission only, in either case, not exceeding nine thousand rupees in the aggregate in the twelve months immediately preceding the month in which this Act applies to such establishment and continues to draw such wages or commission, in the aggregate, not exceding the amount aforesaid in a year,

but does not include any such person who is employed or engaged mainly in a managerial or administrative capacity;

(*e*) all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947, shall have the meanings respectively assigned to them in that Act. 14 of 1947.

Power of Central Government to declare certain industries to be notified industries.

3. The Central Government may, having regard to the nature of any industry (not being pharmaceutical industry), the number of employees employed in such industry to do any work relating to promotion of sales or business or both, the conditions of service of such employees and such other factors which, in the opinion of the Central Government, are relevant, declare such industry to be a notified industry for the purposes of this Act.

Leave.

4. In addition to such holidays, casual leave or other kinds of leave as may be prescribed, every sales promotion employee drawing wages (being wages, not including any commission) shall be granted, if so requested for—

(*a*) earned leave on full wages for not less than one-eleventh of the period spent on duty;

(*b*) leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service.

Issue of appointment letter.

5. Every employer in relation to a sales promotion employee shall furnish to such employee a letter of appointment, in such form as may be prescribed,—

(*a*) in a case where he holds appointment as such at the commencement of this Act, within three months of such commencement; and

(*b*) in any other case, on his appointment as such.

8 of 1923.

6. (*1*) The provisions of the Workmen's Compensation Act, 1923, as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act. Application of certain Acts to sales promotion employees.

14 of 1947.

(*2*) The provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act and for the purposes of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute.

11 of 1948.

(*3*) The provisions of the Minimum Wages Act, 1948, as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.

53 of 1961.

(*4*) The provisions of the Maternity Benefit Act, 1961, as in force for the time being, shall apply to, or in relation to, sales promotion employees, being women, as they apply to, or in relation to, women employed, whether directly or through any agency, for wages in any establishment within the meaning of that Act.

21 of 1965

(*5*) The provisions of the Payment of Bonus Act, 1965, as in force for the time being, shall apply to or in relation to, sales promotion employees as they apply to, or in relation to employees within the meaning of that Act.

39 of 1972.

(*6*) The provisions of the Payment of Gratuity Act, 1972, as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.

7. Every employer in relation to an establishment shall keep and maintain such registers and other documents and in such manner as may be prescribed. Maintenance of registers.

8. (*1*) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits within which they shall exercise their functions. Inspectors.

(*2*) Any Inspector appointed under sub-section (*1*) may, for the purpose of ascertaining whether any of the provisions of this Act have been complied with in respect of an establishment,—

(*a*) require an employer to furnish such information as he may consider necessary;

(*b*) at any reasonable time enter the establishment or any premises connected therewith and require any one found in charge

thereof to produce before him for examination any registers and other documents relating to the employment of sales promotion employees;

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been a sales promotion employee in the establishment;

(d) make copies of or take extracts from any register or other documents maintained in relation to the establishment under this Act;

(e) exercise such other powers as may be prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860. 45 of 1860.

(4) Any person required to produce any register or other documeant or to give information by an Inspector under sub-section (2) shall be legally bound to do so.

Penalty.

9. If any employer contravenes the provisions of section 4 or section 5 or section 7 or any rules made under this Act, he shall be punishable with fine which may extend to one thousand rupees.

Offences by companies.

10. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this section, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

11. (*1*) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act. Cognizance of offences.

(*2*) No court shall take cognizance of an offence under this Act, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

12. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. Power to make rules.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the kinds of leave that may be granted to a sales promotion employee under section 4:

(*b*) the form of the letter of appointment to be furnished under section 5;

(*c*) the registers and other documents to be kept and maintained under section 7 and the manenr in which such registers and other documents may be kept and maintained;

(*d*) any other matter which has to be, or may be prescribed.

(*3*) Every rule made bv the Central Government under this Act shall be laid, as soon as mav be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediatelv following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect onlv in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validitv of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

As a result of the Supreme Court judgment in the case of May and Baker (India) Limited and their Workmen (1961-II-LLJ. p. 94), the persons engaged in sales promotion do not come within the purview of the definition of "workman" under the Industrial Disputes Act, 1947 and as such they have no protection regarding security of employment and other benefits under that Act. These persons, particularly the medical representatives in the pharmaceutical industry, have been demanding from time to time that they should be covered by the Industrial Disputes Act. On a petition made by the Federation of Medical Representatives' Associations of India, the Committee on Petitions (Rajya Sabha) in its thirteenth report submitted on March 14, 1972, came to the conclusion that "the ends of social justice to this class of people will be met only by suitably amending the definition of the term 'workman' in the Industrial Disputes Act, 1947 in a manner that the medical representatives are also covered by the definition of 'workman' in the said Act". The Committee also felt that other workers engaged in sales promotions should similarly be considered as workmen.

2. Keeping in view the justification of the demand of the sales promotion employees, and the recommendation made by the Committee on Petitions, and taking other relevant aspects into consideration, it is considered more appropriate to have a separate legislation for governing the conditions of service of sales promotion employees, instead of amending the Industrial Disputes Act, 1947 to bring such employees within its purview.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 6th May, 1975.

K. V. RAGHUNATHA REDDY.

FINANCIAL MEMORANDUM

Clause 8 of the Bill provides for the appointment of inspectors for securing implementation of the various provisions of the Bill. The proposed legislation is to be enforced by the State Governments and the inspectors are to be appointed by the State Governments. Expenditure would be involved from the Consolidated Fund of India only with respect to the appointment of Inspectors in those Union territories which have no Legislative Assemblies, namely, the Union territories of Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Chandigarh and Arunachal Pradesh. Even amongst these Union territories, in the Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep, the work to be done by the inspectors, under the proposed legislation can be handled by the existing inspectorates under the labour departments. It may be necessary to appoint one inspector each for the Union territories of Arunachal Pradesh and Chandigarh. Two inspectors may, however, be required to be appointed for the Union territory of Delhi since there is a large scale concentration of not only medical representatives but also sales promotion employees engaged in the sales of consumer goods on a very competitive basis in that Union territory.

2. The inspectors to be appointed will be in the scale of Rs. 550—900 which is the scale of pay of the labour inspectors in the Delhi Administration. The total annual recurring expenditure is likely to be as under:—

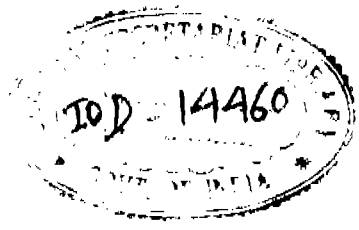
Pay of inspectors	..	Rs. 43,200
Contingencies including Travelling Allowance, etc.	..	Rs. 12,000

3. In addition, a non-recurring expenditure of Rs. 16,000 may have to be provided for in the first year for the setting up of office, purchase of furniture, etc.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to empower the Central Government to make rules to carry out the purposes of the proposed enactment. The matters in respect of which rules may be so made relate, *inter alia*, to the kind of leave that may be granted to a sales promotion employee under clause 4, the form of the letter of appointment to be furnished under clause 5 and the registers and other documents to be kept and maintained under clause 7 of the Bill. The matters in respect of which rules may be made pertain to matters of procedure or detail and it is hardly possible to provide for these matters in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

B. N. BANERJEE,
Secretary-General.



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